BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

| RONALD A. COWHICK |) |
|--|------------------------|
| Claimant | |
| |) |
| VS. |) |
| |) |
| JOJAC'S LANDSCAPE & MOWING, INC | .) |
| Respondent |) Docket No. 1,028,589 |
| |) |
| AND |) |
| |) |
| KANSAS BLDG. INDUSTRY W.C.F. |) |
| Insurance Carrier |) |

ORDER

Claimant requests review of the July 13, 2006 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

Issues

The Administrative Law Judge (ALJ) found the claimant had not sustained his burden of proof to establish that he suffered accidental injury arising out of and in the course of his employment.

The claimant requests review of whether his accidental injury arose out of and in the course of employment with the respondent.

Respondent requests the Board to affirm the ALJ's Order and further argues that claimant also failed to provide timely notice of his alleged work-related accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The claimant alleged he suffered a series of repetitive traumas to his back and bilateral lower extremities as he performed his work duties for respondent through his last day worked on January 20, 2006. However, in October 2005, the claimant sustained an

ankle injury due to a fall at home while walking in his backyard. He was treated by Dr. Craig R. Parman and his ankle placed in a gel cast for a month. Claimant noted his condition worsened and he sought treatment with Dr. Kent L. Heady. Dr. Heady noted that claimant had weakness of his legs with clear radiculopathy. An MRI of the cervical spine revealed disc protrusion with stenosis at C3-C7 and an MRI of the thoracic spine revealed a disc protrusion at T6-T7 causing compression of the anterior spinal cord. Dr. Heady referred claimant to Dr. Matthew N. Henry. At his initial visit with Dr. Henry, the claimant noted that his symptoms of mid to low back pain which radiated into the left buttock and left posterior thigh as well as leg weakness started after his fall at home on October 30, 2005.

The claimant argues that as he continued working for respondent after the fall at home until his last day worked on January 20, 2006, he aggravated and worsened his back condition.

In a letter dated June 5, 2006, to claimant's attorney, Dr. Heady opined:

Regarding your questions of whether repetitive bending and lifting at work could have been the cause or aggravated his condition, I do not think his work activities caused his condition. This is almost certainly a degenerative process which is a combination of genetics, wear and tear over several years course. However, the repetitive bending lifting and other work activities certainly could have aggravated the condition and cause it to become more symptomatic.²

In a letter dated June 2, 2006, to claimant's attorney, Dr. Henry opined regarding causation:

It is possible that Mr. Ronald Cowhick's symptoms could have been aggravated by continued activity including repetitive bending, lifting and other work activities to the point to where he needed surgical intervention and will require further treatment.³

The Workers Compensation Act places the burden of proof on injured workers to establish their rights to compensation.⁴ And that burden is to persuade the trier of facts by a preponderance of the credible evidence that their position on an issue is more probably true than not when considering the whole record.⁵

¹ P.H. Trans., Cl. Ex. 2.

² *Id.*, Cl. Ex. 1.

³ Id., Cl. Ex. 2.

⁴ K.S.A. 44-501(a).

⁵ K.S.A. 44-508(g).

The ALJ noted that Dr. Henry stated it was "possible" that claimant's symptoms "could" have been aggravated by work activities and Dr. Heady stated claimant's work activities "could" have aggravated his condition but neither doctor stated within a reasonable medical probability that claimant's condition was aggravated by his work.

After weighing the evidence presented, the Board finds that claimant has not sustained his burden to prove more probably than not that he sustained an injury arising out of and in the course of his employment. Therefore, claimant's request for benefits should be denied.

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge John D. Clark dated July 13, 2006, is affirmed.

| II IS SO ORDERED. | | | |
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| Dated this | _ day of Septembe | r 2006. | |
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| | | BOARD MEMBER | |
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c: Joseph Seiwert, Attorney for Claimant Roy T. Artman, Attorney for Respondent and its Insurance Carrier